

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VERDIEU BERNARD,
Petitioner,

V.

DEPARTMENT OF HOMELAND
SECURITY, ET AL.,
Respondents

C.A. No. 05-10467-RWZ

MEMORANDUM AND ORDER

ZOBEL, D.J.

On August 17, 2005 a Memorandum and Order issued denying both the Petitioner's Amended Motion for Habeas Relief pursuant to 28 U.S.C. § 2241 and Motion to Stay Removal (#4), and his Motion to Vacate Dismissal (#5), in view of counsel's failure to provide good cause why the motions should be granted. However, the Court reconsidered the Order of Dismissal on other grounds, and granted Petitioner's counsel fourteen (14) days to file a Motion to Re-Open this action for the sole purpose of Transfer of this action to the "appropriate circuit court of appeals" pursuant to Section 106(c) of the REAL ID Act of 2005, and a Motion to Substitute Respondent, to name the proper Respondent in this action. The Memorandum and Order also directed Attorney Himmelstein to transmit copies of all the pleadings in this case to the Petitioner Verdieu Bernard.

On August 31, 2005, Attorney Himmelstein filed a one-page, handwritten Motion to Continue the Deadline to September 30, 2005 (#8). To date, Attorney Himmelstein has failed to file any pleading in compliance with the August 17, 2005 Memorandum and Order, and there is

no indication that he has transmitted the case file to the Petitioner.

Accordingly, in light of the above, it is hereby ORDERED:

1. Attorney Himmelstein's Motion to Continue Deadline to Comply with Court Order (# 8) is allowed to the extent that counsel is Ordered to provide this Court information, forthwith, which delineates the appropriate circuit court of appeals to which this action may be transferred;
2. By no later than October 21, 2005, Attorney Himmelstein shall, regardless of the requirement listed in paragraph (1) above, file a Certificate of Compliance with the Court's directive for transmittal of the papers in this action to Petitioner. Transmittal of the papers shall be made either in person or by express mail, return receipt requested. The Certificate of Compliance shall be made under oath, and signed by Attorney Himmelstein, and shall indicate the date of transmittal of the documents, and the method of transmittal to the Petitioner. The Certificate of Compliance must also contain an averment that all pleadings and Orders of this Court have been transmitted by Attorney Himmelstein.

SO ORDERED.

Dated: October 17, 2005

/s/ Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE